

## **8 Official Opinions of the Compliance Board 122 (2012)**

- ◆ **Closed Session Procedures – Written Statement – Generally** - required to report actions taken
- ◆ **Minutes – Generally** –
  - ◇ need not include documents reviewed by the public body at the meeting
  - ◇ must be informative
- ◆ **Minutes – Generally** –
  - ◇ posting on website, not required
- ◆ **Compliance Board – Authority and Procedures**
  - ◇ *Opinions* – disputes of fact not resolved

\*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

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**November 7, 2012**

**Re: Town of Betterton (Craig O'Donnell)**

We have considered the allegations of Craig O'Donnell ("Complainant") that the Town of Betterton ("Town") violated the Open Meetings Act ("Act") in various ways. The Town, through its attorney, has conceded some violations and has specified the steps it will take to avoid repeating them. Otherwise, one of Complainant's allegations poses a dispute of fact that we are unable to resolve, another causes us to address the attachment of documents to minutes, and the others do not state violations of the Act.

We begin with the conceded violations. Under the Act, a public body which has met in closed session to perform a function subject to the Act must report "each action taken during the session" in the minutes of its next open session. State Government Article ("SG") § 10-509(c)(2)(iv). Complainant alleges that the Town's reports of three closed sessions lack that information. The Town acknowledges certain omissions, and its attorney states that he has advised the Town to report both its actions and its decisions not to take an action in its summaries of closed sessions. He further states that he undertook to review the closing statements for the meetings in question and advised the Town to provide more information on

the topics to be discussed. We concur with his advice and with his underlying conclusion that a public body's decision not to take an action is itself a form of an action.

We turn next to Complainant's allegation that the Town denied his request to inspect its closing statements,<sup>1</sup> an allegation that the Town disputes. Complainant states that he went to the Town office, asked to inspect minutes and closing statements for various meetings, and "was promptly given a binder of meeting materials which was very complete, except there were no closing statements." The Town's attorney reports that the closing statements are kept in a separate binder and would have been provided to Complainant that day, but that Complainant did not ask for them. We are not set up to resolve disputes of fact.

Complainant next inquires whether minutes are deemed to include documents considered at a meeting when those documents are included in a minutes binder. According to Complainant, the minutes of the February 28, 2012 meeting refer to a motion to amend the budget as "line item adjustment only" and do not provide any other information, but the Town's minutes binder contains documents that explain the item. Complainant suggests that documents included in a minutes binder should be deemed part of the minutes and thus available for inspection without a Public Information Act request, because "minutes" are subject to inspection under the Act. *See* SG § 10-509(d). The Town responds generally that the Act does not require a public body to attach documents to minutes. The Act indeed does not require a public body to attach to its minutes the documents reviewed during a meeting. Nonetheless, it does require that minutes be informative.<sup>2</sup> If a public body wishes to achieve that result by attaching

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<sup>1</sup> A "closing statement" is the written statement that a public body's presiding officer must complete before it holds a closed session. SG § 10-508(d). A closing statement is a "matter of public record," SG § 10-508(d)(4), and we have explained that "a copy is to be available as a matter of course to any requester for at least the one-year period during which the statement must be kept." 5 *OMCB Opinions* 184, 187 (2007).

<sup>2</sup> SG § 10-509(c) sets forth the matters that "minutes shall reflect," namely each item considered, the action taken on it, and any recorded vote on it. As we have said before, "each item is to be described in sufficient detail so that a member of the public who reviews the minutes can [gain] an appreciation of the issue under discussion." 6 *OMCB Opinions* 164, 168 (2009).

documents to the minutes instead of describing the issue under discussion, it may do so. In that case, the public body should specify in the minutes that they include attachments. Accordingly, in this case, the Town should have supplemented its sparse reference to a budget amendment either by describing it more fully in the minutes or by specifying the document and attaching it to the minutes. It is important to note that Complainant has not alleged that the Town failed to provide the information: according to Complainant, he found the document about the budget amendment in the same binder.

The Complainant asserts that the Town is obliged to post every set of minutes promptly on its website because it has posted some minutes. He also alleges that some of the links to the minutes are defective. Under the Act, a public body need only make its written minutes available for inspection at its office during business hours. SG § 10-509(d). A public body does not violate the Act by trying to provide additional access. Complainant also wonders whether the Town requires people who request minutes to complete the form it uses for Public Information Act requests. The Town points out that it did not ask Complainant to fill out that form when he asked to inspect minutes, and Complainant himself states that “the question did not arise” when he visited the Town office. We do not theorize on allegations that lack any basis in fact.

In conclusion, we encourage the Town to implement its attorney’s advice and either to include in its minutes a description of each issue under discussion or to expressly incorporate documents that convey that information.

*Open Meetings Compliance Board*

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